

INFORMATION COLLECTION REQUEST (ICR)
United States Environmental Protection Agency (EPA)
Part A of the Supporting Statement
(July 2001)

1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title: Tax-exempt (Dyed) Highway Diesel Fuel: Requirements for Transferors and Transferees (40 CFR 80.29(c))
EPA ICR No. 1718.03, OMB Control Number 2060-0308

1(b) Abstract

In section 211(g) and 211(i) of the Clean Air Act (Act), Congress mandated that diesel fuel used in motor vehicles ("highway diesel fuel") must meet certain quality standards, including a limitation on sulfur content. The Act required EPA to promulgate and enforce a rule to implement the statutory requirements. The Act specifically provides that EPA may require that high sulfur diesel fuel ("off-road diesel fuel") be dyed to aid in keeping the fuels segregated. The dye allows parties in the fuel distribution chain and the EPA to readily detect whether fuel is high sulfur diesel or low sulfur diesel. Because of an Internal Revenue Service (IRS) requirement that certain tax-exempt low sulfur diesel fuel also be dyed (see further explanation in 2(a) below), EPA, in its rule, required parties who transfer dyed low sulfur highway diesel fuel to include a notice on the customary business transfer document that states the product is tax-exempt fuel that meets EPA highway diesel fuel standards. This allows EPA and parties in the distribution chain to make use of the EPA dye requirement despite the IRS requirement that would otherwise make the presence of dye ambiguous in meaning for EPA purposes. Approximately 2,000 facilities, generally diesel fuel terminals, dye tax-exempt low sulfur diesel fuel and have it distributed via approximately 8,000 truck carriers to approximately 10,000 wholesale purchaser-consumer end users. It is estimated that each facility dyes about 200 batches of highway diesel fuel annually.

2. NEED FOR AND USE OF THE COLLECTION

2(a) Need/Authority for the Collection

Section 211(i) of the Act, 42 U.S.C. § 7545(i), provides that the Administrator may require the use of dye in high sulfur diesel fuel to aid in segregating it from low sulfur, highway diesel fuel. The EPA rule at 40 C.F.R. § 80.29 requires that high sulfur diesel be dyed. This greatly aids EPA in enforcing the Act's requirement to segregate highway low sulfur diesel fuel from high sulfur diesel fuel. It also aids parties in the distribution chain to determine if the fuel has been contaminated with high sulfur diesel fuel.

The Internal Revenue Service also requires high sulfur diesel fuel to be dyed, but additionally requires, for tax reasons, that low sulfur tax exempt highway diesel fuel also be dyed (such fuel is sold to governmental entities and various other parties). This IRS requirement would have largely nullified the effectiveness of the Congressionally authorized EPA dye requirement. Since both high sulfur diesel and some low sulfur diesel fuels are dyed, it would be impossible to determine from the presence of the dye whether the fuel were inappropriate for motor vehicle (highway) use. Therefore, EPA required in the rule (see 40 CFR 80.29(c)(1)) that a party transferring dyed low sulfur diesel fuel

must state on the customary business practice (CBP) product transfer document (PTD) that the fuel is tax exempt and meets the regulatory requirements for highway use. PTDs must be retained for five years (see 40 CFR 80.29(c)(2)). EPA determined that these were the least burdensome reporting and recordkeeping requirements that would allow the dye requirement to remain useful to EPA and regulated industry. The volume of diesel fuel affected by these requirements is a very small percentage of all diesel fuel produced. The requirements were promulgated under authority of section 211 of the Act, 42 U.S.C. § 7545, section 114 of the Act, 42 U.S.C. § 7414 and section 208 of the Act, 42 U.S.C. § 7542.

2(b) Practical Utility/Users of the Data

The collection of information is necessary for the proper performance of the functions of the Agency, including that the information to be collected will have practical utility. The simple addition of the automatically printed notice on tax-exempt highway diesel product transfer documents (which EPA allows to be stated in coded form to save space), allows both EPA to determine if dyed product is intended for highway use or is high sulfur diesel for off-road use only. It also helps industry to make this determination. The EPA's Office of Enforcement and Compliance Assurance, Air Enforcement Division is the governmental user of the information contained in the required records.

3. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) Nonduplication

The information required by the rule is not available from any other source. Only the fuel terminal that adds the dye to the diesel fuel is in a position to provide the information that the diesel fuel is low sulfur, despite the presence of the dye that would otherwise indicate that it is high sulfur fuel. The information is available to EPA and downstream end users of the fuel only if it is included on the PTD. The IRS requires no documentation of this information.

3(b) Public Notice Required Prior to ICR Submission to OMB

In compliance with the Paperwork Reduction Act, a public comment period of 60 days was announced in the Federal Register at 66 FR 15422 (March 19, 2001). No comments were received.

3(c) Consultations

In general, interested parties have stated that the paperwork requirement addressed by this ICR requires almost no measurable time annually and no other costs. The information is preprinted or automatically printed on product transfer documents in coded form.

3(d) Effects of Less Frequent Collection

A less frequent collection is not practical. Information is automatically printed on customary business practice product transfer documents for each sales transaction. The requirement is important

to EPA and industry being able to track whether the fuel is dyed fuel that is illegal for highway use or is dyed tax exempt fuel that meets Clean Air Act requirements for motor vehicles.

3(e) General Guidelines

The requirement requires record retention for 5 years. The Agency believes this is important to the success of the program. With the large economic incentive to not comply that exists because of the substantial difference in price that can exist between low sulfur diesel and high sulfur diesel, it is imperative that EPA maintain deterrence by assuring that all parties know that EPA will be able to distinguish the difference between high sulfur and low sulfur deliveries via a review of CBP records. The requirement to retain for 5 years is consistent with other record retention periods in the fuels regulations, with the applicable 5 year statute of limitations, and CBP. Most entities already keep these records for 5 or more years for tax and other business purposes.

3(f) Confidentiality

This is not applicable since no information is submitted to EPA.

3(g) Sensitive Questions

There are no sensitive questions.

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

4(a) Respondents/SIC Codes

The requirements apply to the following highway diesel fuel marketing-related industries (only those that market tax exempt highway diesel fuel): terminals (5171), other distributors (4212), and retailers/wholesale purchaser-consumers (5541).

4(b) Information Requested

(i) Data Items, Including Recordkeeping Requirements

The information collection is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond. This reporting requirement is pre-printed or automatically computer-generated on a customary business practice document. The requirement is found at 40 C.F.R. § 80.29(c) and it provides that any person who transfers custody or title to highway diesel fuel that is dyed shall provide documentation to the transferee that the fuel meets highway diesel fuel requirements and is dyed pursuant to IRS requirements. Diesel fuel terminals are normally the parties who add the dye to low sulfur tax exempt diesel and therefore are the parties who initiate the documentation to the end user. EPA allows parties to use brief code language to meet this requirement. The transferor and transferee must keep the document for five years. The Agency allows the use of electronic recordkeeping.

(ii) Respondent Activities

Note: The full language regarding the 9 regulatory components of burden are provided in full only for burden A., below. After that, the burden components are set forth in abbreviated language.

"*" indicates an item is a customary and usual business practice (CBP). Explanation of the CBP status of the item will follow the checklist of items that the designated item belongs to.

"+" indicates the requirement is a first year only burden that has been fully accomplished.

A. Terminals

CBP Terminal product transfer document for dyed low sulfur diesel fuel includes the required information and document is retained for five years (40 C.F.R. § 80.29) :

- + (i) Reviewing instructions;
- + *(ii) Developing, acquiring, installing and utilizing technology and systems for the purpose of collecting, validating and verifying information;
- + *(iii) Developing, acquiring, installing and utilizing technology and systems for the purpose of processing and maintaining information;
- + *(iv) Developing, acquiring, installing and utilizing technology and systems for the purpose of disclosing and providing information;
- N/A(v) Adjusting the existing ways to comply with any previously applicable instructions and requirements;
- *+ (vi) Training personnel to be able to respond to a collection of information;
- N/A(vii) Searching data sources;
- (viii) Completing and reviewing the collection of information; and
- *(ix) Transmitting or otherwise disclosing the information.

*The document is almost entirely CBP. The required information on these existing documents is added by computer or otherwise preprinted. It automatically appears on all documents for sale of dyed low sulfur diesel. Start up costs accounted for by previous ICR. The actual burden to dye the low sulfur non-taxed fuel is an IRS burden, not an EPA burden. These changes have been in place for over 7 years. The only non-CBP information is the designation of the fuel as dyed low sulfur highway diesel, whose start-up burden was incurred at the start of the program 7 years ago.

B. Truck Distributors of Dyed Low Sulfur Diesel Fuel

Receive CBP product transfer document with the required information, maintain it for 5 years, and pass on the end user's copy to end user (40 C.F.R. § 80.29):

- + (i) Review instructions,
- + *(ii) DAIU T&S to collect, validate, verify information
- + *(iii) DAIU T&S to process, maintain information,
- + *(iv) DAIU T&S to disclose & provide information,
- N/A(v) Adjust existing ways to comply,
- + (vi) Train personnel to respond,

- N/A(vii) Search data sources,
- (viii) Complete & review collection of information,
- *(ix) Transmit or otherwise disclose information.

*This is CBP. The document itself is CBP. Truckers take document and keep a copy, and pass a copy on, as truckers already do in the normal course of business. Truckers normally retain copies for at least 5 years as a customary business practice.

C. Wholesale Purchaser-Consumers of Non-Taxed Low Sulfur Diesel Fuel: Requirement to maintain transfer documents (40 C.F.R. § 80.29):

- + (i) Review instructions,
- * (ii) DAIU T&S to collect, validate, verify information,
- * (iii) DAIU T&S to process, maintain information,
- * (iv) DAIU T&S to disclose & provide information,
- * (v) Transmit or otherwise disclose information.

*CBP. These parties already maintained these CBP records for various lengths of time usually greater than 5 years and are generally required to do so by state laws for at least 5 years.

5. THE INFORMATION COLLECTED--AGENCY ACTIVITIES, COLLECTION METHODOLOGY AND INFORMATION MANAGEMENT

5(a) Agency Activities

The information collection has been developed by offices within EPA (Office of air and Radiation (OAR) and Office of Enforcement and Compliance Assurance (OECA)) that have planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to Agencies and the public.

EPA engages in the following activities in regard to the information collection.

- Develop regulations, as required by the CAA (this has already been done).
- Answer respondent questions (this has been done for years; the Agency has published, including electronically, extensive Q & A documents, for example).
- Review records during inspections and investigations (we would review the CBP records even if the required information were not required).

5(b) Collection Methodology and Management

The information collection has been developed by offices within EPA (OAR and OECA) that have planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall

enhance, where appropriate, the utility of the information to Agencies and the public. The information collection, to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, Agency efficiency and responsiveness to the public.

The product transfer document information can be included on transfer documentation customarily used. EPA allows required information to be encoded to save space. Electronic recordkeeping is permitted. There is no reporting of information to EPA.

5(c) Small Entity Flexibility

The proposed information collection reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the Agency, including with respect to small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as: (1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond; (2) the clarification, consolidation, or simplification of compliance and reporting requirements; or (3) an exemption from coverage of the collection of information, or any part thereof.

The rule's requirements regarding transfers of dyed low sulfur diesel fuel has a quantifiable burden only for the terminal that initiates the transfer. Terminals are generally businesses of significant size and are often owned by large corporations. Terminal operators have informed EPA that the requirement creates almost no burden for them because the information is automatically printed by computer. The truckers and end users of the fuel, which include smaller businesses and local governmental agencies, generally have no non-CBP burden. Therefore, no specific flexibility is needed.

5(d) Collection Schedule

The information is automatically printed on customary business practice documents that accompany each transaction.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

6(a) and (b) Estimating Respondent Burden and Costs

Estimating the burden is straightforward. Capital/start-up costs were incurred by industry in 1993. Since this involved programming a computer to print the code or regulatory language on the PTD, there are no annualized capital costs. Because the PTDs are documents produced and retained in the normal course of business, there are no operating and maintenance (O&M) costs. Thus, there is only a small respondent burden for those parties which dye the diesel fuel (usually terminals). The burden is for placement of the notice or code on the PTDs. There are about 2000 facilities that each dye about 200 shipments of tax-exempt highway diesel fuel annually. Thus, the programmed code is automatically entered on about 400,000 PTDs annually. Assuming an average burden of 2 seconds per PTD gives a total annual burden of 222 hours. A reasonable industry labor cost is \$60 per hour, for a total labor cost of \$13,320. There are about 8,000 carriers of dyed highway diesel fuel and about

10,000 end users, typically school and other municipal fleets which are entitled to tax-exempt fuel.

6(c) ESTIMATING EPA BURDEN AND COST

1. Start up costs have been accomplished.
2. Assume Agency labor cost based on GS-12 level (the Agency median grade for Environmental Protection Specialists and Program Analysts). Hourly cost to EPA is calculated by multiplying the annual pay rate times 1.16 (benefits factor) and divide by 2080 (the number of work hours per year). This ICR estimates a 2001-2004 GS-12 salary at \$60,000. This comes to an hourly cost of approximately \$34.00.
3. An effective enforcement program might include 1,000-5,000 facility inspections nationwide, with travel costs of \$3,500/week for 10 weeks and 800 EPA burden hours for inspections. Case processing burden may be 160 hours per year at above assumed wage rate.

6(d) REASONS FOR CHANGE IN BURDEN

- (i) New Requirement: There were no changes to the rule that affected burden estimates for this renewal ICR.
- (ii) Adjustments: The annual estimate for printing of the code or description on the PTDs has been revised slightly upward from 87 hours and \$2,304 in the previous ICR to 222 hours and \$13,320.

6(e) BURDEN STATEMENT

Not applicable. No forms are submitted to EPA, and it would not be appropriate for the PTDs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This section is not applicable because statistical methods are not used.